

RESOLUTION NO. 91-203

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A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING EXECUTION OF NATURAL GAS
PROCUREMENT THIRD PHASE AGREEMENT

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BE IT HEREBY RESOLVED as follows:

The Natural Gas Procurement Program Third Phase Agreement is hereby approved and the Lodi City Manager and City Clerk are hereby authorized and directed on behalf of this Participant to execute such agreement.

Dated: November 6, 1991


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I hereby certify that Resolution No. 91-203 was passed and adopted by the Lodi City Council in a regular meeting held November 6, 1991 by the following vote:

Ayes: Council Members - Pennino, Pinkerton, Sieglock, Snider
and Hinchman (Mayor)

Noes: Council Members - None

Absent: Council Members - None


Alice M. Reimche
City Clerk

NATURAL GAS PROCUREMENT PROGRAM
THIRD PHASE AGREEMENT

This Agreement, dated as of November 6, 1991, 1991, by and among the Northern California Power Agency, a joint powers agency of the State of California (NCPA) and the members of NCPA which have executed this Agreement (Participant or Participants), is entered into on the basis of the following

RECITALS:

- A. On March 28, 1991, the NCPA Commission adopted Resolution No. 91-09, approving the Natural Gas Procurement Program Service Schedule (Service Schedule).
- B. NCPA and certain of its members have determined that procuring contract and other rights to and for the transportation, storage, and supply of natural gas for use in NCPA projects, and for the needs of members for their own use as fuel or for resale, is in the best interests of NCPA and its members.
- C. This Agreement is the Third Phase Agreement contemplated in the Service Schedule. The primary purpose of this Agreement is to assemble an integrated bundle of rights to a natural gas supply useful to NCPA and the Participants.

NOW THEREFORE, NCPA and the Participants hereby enter into this

AGREEMENT

Section 1. Service Schedule. This Agreement supersedes the Service Schedule.

Section 2. Assignment to Participants. The Participants in the Combustion Turbine Project and the members who executed and delivered the Service Schedule hereby assign all of their right, title and interest in their obligations and entitlements under the Service Schedule to the Participants to

EXECUTION COUNTERPART

this Agreement and the Participants do hereby accept such obligations and entitlements.

Section 3. Participation Percentages. The Participation Percentages of the Participants are shown in Appendix A, attached to and incorporated into this Agreement. The Participation Percentage for each Participant shall be the percentage set forth opposite the name of such Participant in Appendix A, as such appendix may be amended from time to time in accordance with this Agreement.

Section 4. Authority of General Manager.

4.1 The General Manager is hereby authorized, on behalf of the Participants, to enter into contracts and to take other actions, including but not limited to the acquisition of real and personal property, the expenditure of NCPA staff resources, and the retention of expert consultants to obtain rights to the transportation, storage, and supply of natural gas (Project); provided that expenditures resulting from such contracts or actions must be in accordance with the Project Budget provided for in this Agreement.

4.2 The General Manager shall present each contract which would encumber more than \$15,000 in a fiscal year to the NCPA Commission for its approval or disapproval prior to the effective date or the date of rescission of each contract.

4.3 The General Manager shall exercise the authority delegated by this Agreement to promote economy by assembling an integrated bundle of natural gas rights for electric power production or other uses or purposes and, because of efficiencies resulting from the assembled rights for all Participants, for resale by the Participants which have exercised their powers to furnish natural gas for resale.

Section 5. Project Availability. NCPA shall make available or cause to be made available, and sell to each Participant, and each Participant shall be

entitled to receive, and shall purchase from NCPA, such Participant's Participation Percentage of the Project.

Section 6. Rates and Charges. NCPA shall fix rates and charges to the Participants, on a fixed and variable basis, to produce revenues to NCPA from the Project at least equal to the amounts needed by NCPA to meet the total costs of NCPA to provide the Project. Each Participant hereby directs NCPA to assess the rates and charges in a manner which facilitates collection, such as a cost of fuel for the NCPA projects which consume or will consume natural gas, and charge back such rates and charges through the third phase agreements or facilities agreements for such projects, unless a Participant directs otherwise. The rates and charges shall be uniform for NCPA and Participant projects of similar capacity factors. NCPA shall review and adjust rates and charges as required.

Section 7. Special Fund Obligation. Each Participant shall be obligated to make payments under this Agreement solely from the revenues of, and as an operating expense of, its electric system, or its gas system. However, nothing in this Agreement shall be construed as prohibiting any Participant from using any other funds or revenues for purposes of satisfying any provisions of this Agreement if the Participant chooses to do so.

Section 8. Unconditional Obligation. Each Participant shall make payments under this Agreement whether or not the Project is available and notwithstanding the suspension, interruption, interference, reduction or curtailment of the Project, in whole or in part, for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by NCPA or any other Participant under this Agreement or any other agreement.

Section 9. Several Obligation. No Participant shall be liable under this Agreement for the obligations of any other Participant. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties. The obligation of each Participant to make payments under this

Agreement is a several obligation and not a joint obligation with those of the other Participants.

Section 10. Rate Obligation. Each Participant covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its electric system, or gas furnished through its gas system, sufficient to provide revenues adequate to meet its obligations under this Agreement. The obligation of a Participant to make payments under this Agreement shall not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the Participant or upon any of its income, receipts or revenues, except the revenues of its electric system or its gas system. Neither the Participant nor the State of California or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the payments provided for in this Agreement.

Section 11. Operation and Maintenance Obligation. Each Participant covenants and agrees that it shall, at all times, operate the properties of its electric system or its gas system and the businesses in connection therewith in an efficient manner and at reasonable cost and shall maintain its electric system or gas system in good repair, working order, and condition.

Section 12. Sales of Surpluses. NCPA is authorized and directed to market, lease, rent, sell and assign natural gas transportation, storage and supply rights of the Project, surplus to the needs of the Participants, to persons or entities which are not Participants. NCPA shall endeavor to set rates and charges for such surplus rights at amounts which recover the costs of such rights and a premium for the risks borne by the Participants. Any premium shall be credited to the accounts of the Participants as they may direct. Short term layoffs of rights in the Project, between or among Participants, shall be permitted, for such periods as Participants may agree in a meeting of the NCPA Commission, pursuant to the voting provisions of this Agreement.

Section 13. Participant Direction and Review. NCPA shall comply with all lawful directions of the Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions

of the Participants, including giving directions to NCPA, will be taken only at meetings of the NCPA Commission duly called and held pursuant to the open meeting laws.

Section 14. Quorum. A quorum of the NCPA Commission, for purposes of acting upon matters relating to this Agreement, shall consist of Commissioners, or their designated Alternates, representing at least two Participants having a combined majority in interest based on Participation Percentages.

Section 15. Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement. Actions of the NCPA Commission shall be effective only upon a majority vote, except that upon demand of any Participant, at any meeting of the Commission, the vote on any issue relating to this Agreement shall be based upon Participation Percentages. Actions of the Commission shall be effective only upon an affirmative vote of 65% or greater of the Participation Percentages established in this Agreement upon such demand. Any Participant may veto an affirmative action of the Commission relating to this Agreement that was not taken by a 65% or more vote, within 10 days following mailing of notice of such action, by giving written notice of veto to NCPA, unless at a meeting of the Commission called for the purpose of considering the veto, held within 30 days after such veto notice, the holders of 65% or more Participation Percentages shall vote to override the veto. The 65% of the Participation Percentages specified in this Agreement shall be reduced by the amount that the Participation Percentage of any Participant exceeds 35%, but such 65% shall not be reduced below a majority in interest.

Section 16. Budget. Prior to the beginning of each fiscal year for which no budget has been adopted, the NCPA Commission shall adopt, as a part of the regular budget for such fiscal year or years, a budget for the costs of developing and maintaining the Project (Project Budget). The NCPA Commission may adopt budgets for more than one fiscal year. The Project Budget shall authorize the General Manager to make expenditures for

programs in the amounts specified in the Project Budget, subject to the terms and conditions of this Agreement.

Section 17. Long-Term Transfers. A Participant may not sell, transfer, or assign (transfer) all or any part of its Participation Percentage of the Project without the advance written consent of the NCPA Commission. By written evidence of official action duly and regularly made with all requisite authority, Participants may transfer among themselves their Participation Percentages, after written notice to NCPA and all Participants. No long-term transfer, being a transfer for a period longer than prescribed by the Participants acting through the NCPA Commission as provided in section 12 of this Agreement, shall occur without ninety days advance written notice to NCPA or such lesser period of notice as NCPA may be able to accept. If the proposed transfer is to an entity that is not a Participant, all Participants must be given the right of first refusal in proportion to their Participation Percentages. If the proposed transfer is to a person or entity that is not a member of NCPA, all NCPA members shall have the right of first refusal in proportion to the amounts those members contribute to the NCPA general fund. No transfer shall relieve a Participant of its obligations under this Agreement, except that such obligations shall be discharged to the extent that NCPA receives payment from the transferee of the transferring Participant's Participation Percentage. Upon the effective date of such transfer, a new service schedule shall be annexed to Appendix A to reflect the transferred Participation Percentages.

Section 18. Records and Accounts. NCPA shall keep accurate records and accounts for the Project. Such records and accounts shall be made available to any Participant for inspection at any reasonable time. All records and accounts shall be subject to audit at the request of and at the reasonable expense of any Participant.

Section 19. Measurements. NCPA shall establish procedures for the measurement of the quantities of gas transported, stored, and supplied under this Agreement. Such procedures shall provide for maintenance, testing, calibrating, correction, and adjustment.

Section 20. Billing. Monthly billing statements prepared by NCPA shall be sent to each Participant showing the Participant's share of costs and other charges payable pursuant to this Agreement for each billing period. Such statements shall separately set forth any credit or debit adjustments. Amounts shown on each billing statement are due and payable thirty (30) days after the date of the billing statement except that any amount due on a Friday, holiday or weekend may be paid on the closest following workday.

Section 21. Disputes. Any amount due and not paid by a Participant shall bear interest from the due date until paid at the annual rate established by the Commission of NCPA at the time of adoption of the then most recent budget. If a Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount which may be due the Participant, which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Participant fail to agree on the correctness of a bill within thirty (30) days after the Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 *et seq.* of the Code of Civil Procedure.

Section 22. Obligations in the Event of Default.

22.1 Upon failure of any Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Participant, and if payment is not made within 30 days from the date of such demand, the failure to make payment shall constitute a default.

22.2 Upon the default of any Participant, NCPA (a) may terminate the provisions of this Agreement insofar as the Agreement entitles the defaulting Participant to its Participation Percentage of the Project, and (b)

shall use its best efforts to sell and transfer for the Participant's account all or a portion of the Participant's Participation Percentage of the Project. When making such sales and transfers NCPA shall allow all Participants the right of first refusal in proportion to their Participation Percentages and shall allow other NCPA members the right of second refusal in proportion to the amount those members contribute to the NCPA general fund.

Notwithstanding such sale, transfer or termination, the obligations of the defaulting Participant under this Agreement shall continue in full force and effect except that such obligations shall be discharged to the extent that NCPA receives payment from a purchaser or transferee of the defaulting Participant's Participation Percentage in the Project.

22.3 Upon the default of any Participant, and except as transfers are made pursuant to subsection 22.2 of this section, (a) the Participation Percentage of each nondefaulting Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Participants, and (b) the defaulting Participant's Participation Percentage in the Project shall (but only for purposes of computing the respective Participation Percentages of the nondefaulting Participants) be reduced correspondingly. The fact that other Participants have increased their obligations to NCPA according to this subsection shall not relieve the defaulting Participant of its liability under this Agreement, and any Participant increasing its obligation shall have a right of recovery from the defaulting Participant to the extent of its increase in obligation.

Section 23. Member Service Agreement. This Agreement is a Service Schedule to the Member Service Agreement and a third phase agreement and shall be deemed incorporated into the Member Service Agreement the Participant has executed or successor agreement to the Member Service Agreement. This Agreement shall be construed as constituting the more specific terms governing the general relationship set out in that Member Service Agreement.

Section 24. Term of Agreement. This Agreement shall become effective on the date the last of the Participants executes and delivers it to

NCPA. This Agreement shall remain in full force and effect until all obligations entered pursuant to it have been extinguished, cancelled, or discharged.

Section 25. Termination. This Agreement may not be cancelled or terminated without the consent of all Participants and NCPA and unless the means have been established to timely pay, extinguish, or discharge, without any liability to NCPA or to any Participant, all obligations entered and liabilities incurred under this Agreement.

Section 26. Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Participant or to NCPA shall be given in writing and shall either be personally delivered to the Participant or transmitted to the Participant by regular mail at the address designated by the Participant. The designation of such address may be changed at any time by written notice.

Section 27. No Waivers. No waiver of performance under this Agreement shall be effective unless given by the Commission. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance.

Section 28. Uncontrollable Forces. Except with respect to the payment of money, a Participant shall not be considered to be in default of any obligation under this Agreement if prevented from fulfilling such obligation by reason of an uncontrollable force. An uncontrollable force shall include storm, flood, lightning, earthquake, tsunami, explosion, civil disturbance, or similar causes beyond the control of a Participant, which could not reasonably have been avoided by the exercise of due diligence and foresight. Any Participant affected by an uncontrollable force shall use due diligence to place itself in a position to fulfill its obligations under this Agreement and such Participant shall exercise such due diligence to remove the effect of the uncontrollable force with reasonable dispatch.

Section 29. Liability. All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agency which is a Participant, while engaged in the performance of their functions or duties, shall apply to them in the same degree and extent when performing their respective public duties in connection with this Agreement.

Section 30. Indemnity. NCPA and the Participants individually shall indemnify, defend, hold and save each other harmless from any and all loss or damage sustained, and from any and all liability to any person or property incurred by the other or others, by reason of any act or performance, or failure to act or perform on the part of the indemnifying Participant or its officers, agents, or employees in connection with the Project.

Section 31. Reports. NCPA shall prepare and publish monthly reports regarding the Project in the ordinary course of NCPA Commission business.

Section 32. Pledge and Assignment. NCPA may pledge and assign this Agreement, with the approval of the NCPA Commission, for the purpose of providing security for the performance of contracts authorized by the Commission for this Project or for the purpose of securing temporary or permanent financing for any property or facilities or contract rights which the NCPA Commission determines are necessary for the Project.

Section 33. Amendments. This Agreement may be amended only by a written instrument executed by the Participants and NCPA with the same formality as this Agreement.

Section 34. Severability. In the event that any of the terms, covenants or conditions of this Agreement shall be held invalid, NCPA and the Participants intend that all other terms, covenants and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 35. Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 36. Counterparts. This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument and as if all Participants to all of the counterparts had signed the same instrument.

Section 37. Headings. The headings to the sections in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 38. Warranty of Authority. Each Participant which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all of the terms, covenants and conditions of this Agreement and has acted with all of the requisite capacity and authority and the approval of its governing body.

APPENDIX A

NATURAL GAS PROCUREMENT PROGRAM SERVICE SCHEDULE I PARTICIPATION PERCENTAGES

Alameda	11.000%
Lodi	16.000
Lompoc	2.000
Palo Alto	5.000
Roseville	16.000
Turlock Irrigation District	50.000

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IN WITNESS WHEREOF, each Participant has by the signature of its duly authorized representatives shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA
POWER AGENCY

CITY OF ALAMEDA

By: _____

By: _____

Date: _____

Date: _____

CITY OF LOMPOC

CITY OF PALO ALTO

By: _____

By: _____

By: _____

By: _____

Date: _____

Date: _____

CITY OF ROSEVILLE

TURLOCK IRRIGATION
DISTRICT

By: _____

By: _____

By: _____

By: _____

Date: _____

Date: _____

CITY OF LODI

By: Thomas A. Peterson
Thomas A. Peterson, City Manager

By: Alice M. Reimche
Alice M. Reimche, City Clerk

Date: November 7, 1991

Approved as to form Bob McNatt

Bob McNatt
City Attorney

-12-

Date: 11-12-91

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